



## 94TH GENERAL ASSEMBLY

### State of Illinois

2005 and 2006

SB2742

Introduced 1/20/2006, by Sen. Terry Link

#### SYNOPSIS AS INTRODUCED:

50 ILCS 505/3.5 new

50 ILCS 505/8 new

50 ILCS 505/9

from Ch. 85, par. 5609

Amends the Local Government Prompt Payment Act to authorize construction related contracts covered by the Act to include retainage provisions. Sets forth certain conditions for these retainage provisions. Provides that if the local government entity fails to pay any invoice within 30 days of approval or fails to approve or disapprove the invoice within the time required to approve or disapprove a bill, plus an additional 30 days, the contractor and subcontractors not paid may suspend performance under the construction contract or subcontracts without penalty until the overdue payment or payments are made. Sets forth that interest payments received pursuant this Act shall be disbursed to subcontractors and material suppliers to whom payment has been delayed on a pro rata basis. Authorizes contractors, subcontractors, and material suppliers to recover the interest payable under this Act in any action pursuant to Section 23 of the Mechanics Lien Act or pursuant to the Public Construction Bond Act.

LRB094 16233 RSP 51477 b

FISCAL NOTE ACT  
MAY APPLY

STATE MANDATES  
ACT MAY REQUIRE  
REIMBURSEMENT

1 AN ACT concerning local government.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Local Government Prompt Payment Act is  
5 amended by changing Section 9 and by adding Sections 3.5 and 8  
6 as follows:

7 (50 ILCS 505/3.5 new)

8 Sec. 3.5. Retainage provisions. A construction related  
9 contract covered by this Act may include a provision for  
10 retainage of a portion, not to exceed 10%, of the payment due.  
11 When the gross invoice of the contractor, payable under the  
12 contract, equals or exceeds 50% of the value of the contract,  
13 the retainage withheld thereafter shall not exceed 5% of the  
14 total amounts invoiced. A construction contractor shall not  
15 withhold from any subcontractor a greater percentage of  
16 retainage than is withheld under the prime contract.

17 (50 ILCS 505/8 new)

18 Sec. 8. Cessation of work for nonpayment. If the local  
19 government entity fails to pay any invoice within 30 days of  
20 approval or fails to approve or disapprove the invoice within  
21 the time set forth in Section 5 of this Act, plus an additional  
22 30 days, the contractor and subcontractors not paid may suspend  
23 performance under the construction contract or subcontracts  
24 without penalty until the overdue payment or payments are made.

25 (50 ILCS 505/9) (from Ch. 85, par. 5609)

26 Sec. 9. When a contractor receives any payment, the  
27 contractor shall pay each subcontractor and material supplier  
28 in proportion to the work completed by each subcontractor and  
29 material supplier their application less any retention. If the  
30 contractor receives less than the full payment due under the

1 public construction contract, the contractor shall be  
2 obligated to disburse on a pro rata basis those funds received,  
3 with the contractor, subcontractors and material suppliers  
4 each receiving a prorated portion based on the amount of  
5 payment. All interest payments received pursuant to Section 4  
6 of this Act shall be disbursed to subcontractors and material  
7 suppliers to whom payment has been delayed on a pro rata basis.

8 When, however, the public owner does not release the full  
9 payment due under the contract because there are specific areas  
10 of work or materials the contractor is rejecting or because the  
11 contractor has otherwise determined such areas are not suitable  
12 for payment, then those specific subcontractors or suppliers  
13 involved shall not be paid for that portion of the work  
14 rejected or deemed not suitable for payment and all other  
15 subcontractors and suppliers shall be paid in full.

16 If the contractor, without reasonable cause, fails to make  
17 any payment to his subcontractors and material suppliers within  
18 15 days after receipt of payment under the public construction  
19 contract, the contractor shall pay to his subcontractors and  
20 material suppliers, in addition to the payment due them,  
21 interest in the amount of 2% per month, calculated from the  
22 expiration of the 15-day period until fully paid. This Section  
23 ~~subsection~~ shall also apply to any payments made by  
24 subcontractors and material suppliers to their subcontractors  
25 and material suppliers and to all payments made to lower tier  
26 subcontractors and material suppliers throughout the  
27 contracting chain.

28 Contractors, subcontractors, and material suppliers shall  
29 be entitled to recover interest payable under this Act in any  
30 action pursuant to Section 23 of the Mechanics Lien Act (770  
31 ILCS 60/23) or pursuant to the Public Construction Bond Act (30  
32 ILCS 550/).

33 (Source: P.A. 87-773.)